IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

CRP.No. 2127 OF 1997()

CR.1780/1973 OF TALUK LAND BOARD, ERNAD

REVN. PETITIONER/DECLARANT:

JACOB GEORGE, PALLUVATHUKKAL,
NIRANATH, PERUNNA P.O.,
CHANGANACHERRY,
KOTTAYAM DISTRICT.

BY ADV. SRI.P.N.K.ACHAN (SR)
SRI.K.MOHANAKANNAN

RESPONDENTS:

1. THE STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY -
TO THE GOVERNMENT, SECRETARIAT,
TRIVANDRUM.

2. THE TALUK LAND BOARD, ERNAD.

3. THE SPECIAL TAHSILDAR, NILAMBUR.

GOVERNMENT PLEADER SRI. THOMAS JOHN AMBOOKEN.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 17/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRP NO. 2127/1997

ORDER ON CMP NO. 4163/1997 IN C.R.P. 2127/1997

// DISMISSED //

17TH JULY, 2007.

SD/-
P.R. RAMAN, JUDGE.

// TRUE COPY//

P.S. TO JUDGE.

knc/-

P.R. RAMAN, J.

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C.R.P. NO. 2127 OF 1997

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DATED THIS, THE 17TH DAY OF JULY, 2007.

O R D E R

This civil revision petition is directed against the order of the Taluk Land Board dated 14.10.1997 directing the petitioner to surrender an extent of 65.72 acres of land, equivalent to 26.29 standard acres as surplus land as per the ceiling provisions contained in the Kerala Land Reforms Act.

2. This order was passed pursuant to the order of remand by this Court in C.R.P. 32/1991. Earlier, the Taluk Land Board found that the land in question is a rubber plantation which is liable to be exempted; but subsequently, the matter was reopened under Section 85(9) of the Kerala Land Reforms Act on the premise that the certificate produced by the petitioner issued from the Rubber Board was not properly verified and without taking into consideration the report of the authorized officer. Pursuant to the notice, petitioner filed his objection and an order was passed as per the proceedings dated 27.9.1990 whereby it was held that the report of the authorized officer shows that there was no rubber plantation in the area occupied by the declarant which gives room to suspect the Rubber

Board Registration produced by the petitioner. Petitioner produced the Rubber Board Registration certificate 1031 which obviously contained many corrections and interpolations. In view of the suspicious nature of the certificate so produced and in the light of the authorized officer's report, it was found that the declarant has not converted the private forest land as rubber plantation prior to 1.4.1964 and hence decided to retain it in the account of the declarant, as the area is not eligible for exemption as rubber plantation. This order was the subject matter of challenge in C.R.P. 32/1991 before this Court. This Court, after considering the rival submissions made by the parties, allowed the revision by way of remand as per its order dated 6th June, 1997. The two contentions which were raised as is seen from the report are (i) that the earlier order of the Taluk Land Board is not liable to be reopened and the property ordered to be surrendered was originally a private forest and it was converted into rubber plantation after 1.4.1964 and (ii) conversion from one exempted category to another exempted category is permitted and such a converted property will be covered by Section 81 of the KLR Act. The first contention was rejected by this Court holding that the Taluk Land Board is competent to reopen the case. Regarding the second contention, this court observed as follows:

> "To buttress his second contention it was brought to my notice that the revision petitioner has produced a copy of the Rubber Registration Certificate No. 1031 before the Land Board. It is seen that what has been produced is a duplicate certificate. It contained certain corrections and interpolations which are not attested by the officers of the Rubber Board. The original certificate also is not produced. The contention that the area ordered to be surrendered was part of a private forest was not substantiated by the revision petitioner. So, the counsel submits that if sufficient opportunity is given to his client, he will be in a position to prove before the Taluk Land Board that the property was a private forest and the same has converted into Rubber estate in the year 1964-65."

3. Considering the extent of land involved, the order under challenge was set aside in order to grant one more opportunity to the revision petitioner to substantiate his contention by adducing evidence. In all other respects, the order impugned was confirmed.

4. In the order now passed by the Taluk Land Board, it was found that the petitioner filed, along with his written statement, a certified copy of Document No. 1891/63 of SRO Wandur by which certain properties were purchased by the petitioner and his brother and Document No. 3125/64 of SRO Wandur by which the properties purchased as per Document No. 1891/63 were partitioned between the petitioner and his brother. A letter dated 29.7.1969 issued by the Rubber Board concerning Reg. No. ERD

1031, where there is no mention about the plantation, was also produced. The letter, according to the learned Board, only shows the area in metric system only. He has also produced a copy of the certificate dated 7.4.1997 issued to Mrs. Aleyamma Thomas, Koombadi, Puthenpurayil, Edakkara in which the year of planting and area alone is shown. The name of registered owner is shown as Sri. George Jacob, (P.O.) Kerala Estate. But the relevancy of the above letter is not proved. The petitioner was not able to produce the original certificate issued by the Rubber Board in spite of the directions given by this Court. It was also found that though there is a recital in Document No. 1891/63 about a permit dated 24.1.1962 issued by the District Collector, Kozhikode under the MPPP Act, it pertains alienation or lease. According to the land Board, though there was a direction as seen in the document to obtain clear felling permit, it was not obtained and produced before it for perusal. Therefore, it was found that the documents produced before the Taluk Land Board pursuant to the remand were the same which were produced before it when the earlier order was passed on 27.9.1990. Hence the Land Board came to the conclusion that the petitioner did not adduce any fresh evidence. However, it admits of no doubt that one piece of evidence was produced which is the photo copy of the letter dated 7.4.1997 of the Rubber Board, sent to Mrs.

Aleyamma Thomas. But it was noticed that in the said letter, the name of registered owner in respect of the plantation covered by Registration No. ERD 1031 is shown as one George Jacob and the area planted is shown as 30.35 Hectares. But the petitioner's name is George Jacob and not Jacob George. Because of the discrepancy in the name and in the absence of details regarding the number of plants planted and other details, the Taluk Land Board did not consider the said piece of evidence as conclusive proof of the petitioner's contention that he had planted the area with rubber prior to 1.4.1964. Accordingly, it was concluded that the petitioner has not substantiated his contention and hence passed the order impugned in this revision.

5. The revision petition was heard by a learned Judge of this Court and by judgment dated 3rd March, 1998 the same was dismissed. Subsequently the petitioner filed a review petition producing Annexure A1, which is the true copy of the certificate issued by the Rubber Board No. 19/NBR/96 dated 26.3.1998 certifying that the original area of ERD 1031 as per the registration details available in the Office is as shown in that letter. The registered owner is shown as Sri. Jacob George, P.O. Kerala Estate, the year of planting is shown as 1964/1965 and the area is shown as 30.35 Hectares. It is also certified that in the certificate issued earlier

dated 7.4.1997, the name of the owner is shown as George Jacob instead of Jacob George. After hearing the parties, the review was allowed by this Court, the order passed in the civil revision petition was set aside and the matter was posted for hearing and that is how the matter has come up before me.

6. As already noticed, the point that arises for consideration is as to whether the area ordered to be surrendered is a rubber plantation as on 1.4.1964. According to the petitioner, this was a private forest originally governed by the Provisions of the MPPF Act and after obtaining necessary permission from the District Collector, clear felling was done and converted the area into a rubber plantation. It was contended that either as a private forest or as a rubber plantation, it is liable to be exempted. According to the petitioner, this was already converted in to a rubber plantation prior to 1.4.1964. The only point that arises for consideration is whether the petitioner was able to establish his case that it is a rubber plantation liable to be exempted from the ceiling area applicable to him.

7. As noticed, this Court enabled the petitioner to produce additional evidence by judgment in C.R.P. 32/1998. The petitioner was not able to adduce sufficient evidence before the Taluk Land Board pursuant to the remand except by producing a certificate issued by the Rubber Board in

favour of one Aleyamma Thomas and the Land Board has rightly held that such certificate will not improve the case of the petitioner, in the absence of any proper explanation regarding the relationship of Aleyamma with the petitioner and further due to the discrepancies in the name mentioned as registered owner. Petitioner has now produced along with the review petition a new certificate issued from the Rubber Board. This certificate was not produced before the Taluk Land Board because it was only obtained only during the pendency of the case before this Court. Necessarily petitioner could be given an opportunity to produce the said certificate before the Taluk land Board so that that authority could consider the same and other evidence, if any, and take a decision. In the above circumstances, petitioner crave leave for one more opportunity for producing the said certificate before the Taluk Land Board and to substantiate his contention. Since the petitioner had already given an opportunity to produce such certificate before the Taluk Land Board and he was not able to substantiate his contention, a second remand at the instance of the petitioner, for his own fault in not producing the proper certificate, has therefore, to be allowed only on terms.

8. Accordingly, the civil revision petition is allowed by way of remand to the Taluk Land Board so as to give an opportunity to the

petitioner to produce the certificate and any other evidence to substantiate his contention that the area now ordered to be surrendered is a land liable to be exempted as a rubber plantation on the appointed day, on condition that petitioner shall pay an amount of Rs. 5,000/- towards cost which amount shall be paid to the High Court Legal Services Committee, within a period of two weeks. Petitioner shall produce the evidence of such payment before the Taluk Land Board. The Taluk Land Board shall dispose of the matter in accordance with law.

The matter is posted for appearance of the parties before the Taluk Land Board on 4.9.2007.

P.R. RAMAN,
(JUDGE)

knc/-

P.R. RAMAN, J.
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C.R.P. 2127 OF 1997
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O R D E R
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DATED: 17.7.2007.